



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**[AU Docket No. 17-143; DA 18-260]**

**Auction of Cross-Service FM Translator Construction Permits Scheduled for May 15, 2018; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 99**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final action; requirements and procedures.

**SUMMARY:** This document summarizes the procedures and announces upfront payment amounts and minimum opening bids for the auction of cross-service FM translator construction permits (Auction 99). The Public Notice summarized here is intended to familiarize applicants with the procedures and other requirements for participation in the auction.

**DATES:** A sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159) must be submitted before 6:00 p.m. Eastern Time (ET) on April 19, 2018. Bidding in Auction 99 is scheduled to start on May 15, 2018.

**FOR FURTHER INFORMATION CONTACT:** For auction legal questions, Lynne Milne in the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division at (202) 418-0660. For auction process and procedures, the FCC Auction Hotline at (717) 338-2868. For FM translator service questions, James Bradshaw, Lisa Scanlan or Tom Nessinger in the Media Bureau's Audio Division at (202) 418-2700. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

**SUPPLEMENTARY INFORMATION:** This is a summary of *Auction of Cross-Service FM Translator Construction Permits Scheduled for May 15, 2018; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 99*, (Auction 99

*Procedures Public Notice*) released on March 23, 2018. The complete text of the *Auction 99 Procedures Public Notice*, including attachments and any related document, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street S.W., Room CY-A257, Washington, DC 20554. The *Auction 99 Procedures Public Notice* and related documents also are available on the Internet at the Commission's website: <http://wireless.fcc.gov/auctions/99>, or by using the search function for AU Docket No. 17-143 on the Commission's Electronic Comment Filing System (ECFS) web page at <http://www.fcc.gov/cgb/ecfs>.

## **I. GENERAL INFORMATION**

### **A. Background**

1. On June 1, 2017, the Wireless Telecommunications and Media Bureaus announced an auction filing window for AM broadcasters seeking new cross-service FM translator station construction permits. Each applicant listed in Attachment A of the *Auction 99 Procedures Public Notice* previously filed a short-form application (FCC Form 175) during the initial filing window announced in the *Auction 99 Filing Instructions Public Notice*, a summary of which was published at 82 FR 33825 (July 21, 2017). Applicants were previously given the opportunity to eliminate their mutual exclusivity with other applicants' engineering proposals by settlement or technical modification to their proposals.

### **B. Construction Permits and Entities Eligible to Participate in Auction 99**

2. Auction 99 will resolve mutually exclusive engineering proposals for up to 12 new cross-service FM translator stations. A list of the locations and channels of these proposed stations is included as Attachment A. Attachment A also sets forth the names of applicants in each MX group, along with a minimum opening bid and an upfront payment amount for each construction permit in Auction 99.

3. An applicant listed in Attachment A may become qualified to bid only if it meets the

additional filing, qualification, payment and other applicable rules, policies and procedures as described in the *Auction 99 Procedures Public Notice*. Each applicant may become a qualified bidder only for those construction permits specified for that applicant in Attachment A. Each of the engineering proposals within each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A. Once mutually exclusive applications are accepted and thus mutual exclusivity exists for auction purposes, an applicant for a particular construction permit cannot obtain it without placing a bid, even if no other applicant for that construction permit becomes qualified to bid or in fact places a bid.

**C. Rules and Disclaimers**

**1. Relevant Authority**

4. Auction 99 applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including Commission decisions in proceedings regarding competitive bidding procedures (47 CFR Part 1, Subpart Q), application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's cross-service FM translator service and competitive bidding requirements contained in 47 CFR Parts 73 and 74, as well as Commission orders concerning competitive bidding for broadcast construction permits. Applicants must also be thoroughly familiar with the procedures, terms and conditions contained in the *Auction 99 Procedures Public Notice* and any future public notices that may be released in this proceeding.

5. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in their public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of each applicant to remain current with all Commission rules and with all public notices pertaining to Auction 99.

## **2. Prohibited Communications and Compliance with Antitrust Laws**

6. Starting at the deadline for filing a Form 175 on August 2, 2017, the rules prohibiting certain communications set forth in 47 CFR 1.2105(c) and 73.5002(d), (e) apply to each applicant that filed a Form 175 in Auction 99. Subject to specified exceptions, 47 CFR 1.2105(c)(1) provides that all applicants are prohibited from cooperating or collaborating with respect to, communicating with or disclosing, to each other in any manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies (including post-auction market structure), or discussing or negotiating settlement agreements, until after the down payment deadline.

7. Applicants are hereby placed on notice that public disclosure of information relating to bids, bidding strategies, or to post-auction market structures may violate 47 CFR 1.2105(c). In accordance with 47 CFR 73.5002(e), the Bureaus suspended for Auction 99 application of the prohibitions of 47 CFR 1.2105(c) and 73.5002(d) during a specified period for the limited purpose of allowing settlement discussions. Discussion of information covered by these rules outside of the settlement period would violate the rules.

### **a. Entities Subject to Section 1.2105**

8. An applicant for purposes of this rule includes the officers and directors of the applicant, all controlling interests in the entity submitting the FCC Form 175, as well as all holders of interests amounting to 10 percent or more of that entity. A party that submits an application becomes an applicant under the rule at the application deadline and that status does not change based on subsequent developments. Thus, an Auction 99 applicant that does not correct deficiencies in its application, fails to submit a timely and sufficient upfront payment, or does not otherwise become qualified, remains an applicant for purposes of 47 CFR 1.2105(c) and remains subject to the prohibition on certain communications until the applicable down payment deadline.

### **b. Scope of Prohibition on Communications; Prohibition on**

### **Joint Bidding Agreements**

9. The Commission in 2015 amended 47 CFR 1.2105(c) to extend the prohibition on communications to cover all applicants for an auction regardless of whether the applicants seek permits or licenses in the same geographic area or market. Therefore, the Commission now prohibits a joint bidding arrangement, including an arrangement relating to the permits or licenses being auctioned that address or communicate, directly or indirectly, bids, bidding, bidding strategies, including any arrangement regarding price or the specific permits or licenses on which to bid, and any such arrangement relating to the post-auction market structure. The revised rule provides limited exceptions for a communication within the scope of any arrangement consistent with the exclusions from the Commission's rule prohibiting joint bidding, provided such arrangement is disclosed on the applicant's auction application. An applicant may continue to communicate pursuant to any pre-existing agreement, arrangement, or understanding that is solely operational or that provides for a transfer or assignment of licenses, provided that such agreement, arrangement or understanding do not involve the communication or coordination of bids (including amounts), bidding strategies, or the particular licenses on which to bid and provided that such agreement, arrangement or understanding is disclosed on its application.

10. The Bureaus sought comment in the *Auction 99 Comment Public Notice* on whether it would be appropriate to waive or modify the application of 47 CFR 1.2105 provisions, such as the prohibition against certain communications or the prohibition against joint bidding arrangements, so that Auction 99 applicants with overlapping controlling interests relying on the waiver of 47 CFR 1.2105(a)(3) will not thereby violate such other provisions. A summary of this public notice was published at 83 FR 6141 (Feb. 13, 2018). The Bureaus received no comment on this issue. Accordingly, no commenter has suggested that there is a need for a waiver to accommodate any commonly-controlled Auction 99 applicants that filed separate Forms 175 pursuant to the Bureaus' previously-granted waiver of 47 CFR 1.2105(a)(3). Therefore, for Auction 99 the Bureaus have no basis for further waiving or modifying the application of 47 CFR

1.2105 provisions.

**c. Section 1.2105(c) Certification**

11. By electronically submitting its Form 175, each applicant in Auction 99 certified its compliance with 47 CFR 1.2105(c) and 73.5002(d). However, the mere filing of a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated these communication prohibitions may be subject to sanctions.

**d. Reporting Requirements**

12. Any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. Each applicant's obligation under 47 CFR 1.2105(c)(4) to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

**e. Procedures for Reporting Prohibited Communications**

A party must file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. Any report required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the *Auction 99 Procedures Public Notice*. For Auction 99, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by e-mail to Margaret W. Wiener at the following e-mail address: auction99@fcc.gov. If you choose instead to submit a report in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street,

SW, Room 6C217, Washington, DC 20554.14.

15. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2), or 1.2105(c)(4) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). For example, a party's report of a prohibited communication could violate the rule by communicating prohibited information to other applicants through the use of Commission filing procedures that would allow such materials to be made available for public inspection, such as, a submission to the Commission's Office of the Secretary or ECFS. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.

**f. Winning Bidders Must Disclose Terms of Agreements**

16. Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure. Failure to comply with the Commission's rules can result in enforcement action.

**g. Antitrust Laws**

17. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submitted a Form 175.

18. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the U.S. Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

### **3. Due Diligence**

19. The Bureaus remind each potential bidder that it is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for cross-service FM translators that it is seeking in Auction 99. The FCC makes no representations or warranties about the use of this spectrum or these construction permits for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.

20. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureaus strongly encourage each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 99 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Bureaus strongly encourage each applicant to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act, 47 CFR Part 1, Subpart I.



21. The Bureaus strongly encourage each applicant to continue to conduct its own research throughout Auction 99 in order to determine the existence of pending or future administrative or judicial proceedings that might affect its decision on continued participation in Auction 99. Each Auction 99 applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in Auction 99. These due diligence considerations do not comprise an exhaustive list of steps that should be undertaken prior to participating in Auction 99. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

22. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 99. Each potential bidder is responsible for undertaking research to ensure that any permits won in Auction 99 will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

23. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

#### **4. Use of Auction Systems**

24. The Commission makes no warranty whatsoever with respect to the FCC auction

systems. In no event shall the Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC auction systems that are accessible to qualified bidders in connection with Auction 99. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC auction systems.

**D. Auction Specifics**

**1. Bidding Methodology and Options**

25. The Commission will conduct Auction 99 over the Internet using the FCC auction bidding system. Qualified bidders are permitted to bid electronically via the Internet or by telephone using the telephonic bidding option. All telephone calls are recorded.

26. The initial schedule for bidding rounds will be announced by public notice at least one week before bidding in the auction starts. Moreover, unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

**2. Pre-Auction Dates and Deadlines**

27. The following dates and deadlines apply:

Upfront Payments (via wire transfer)..... April 19, 2018; 6:00 p.m. ET  
Auction Tutorial Available (via Internet) ..... May 4, 2018  
Mock Auction ..... May 11, 2018  
Auction Begins ..... May 15, 2018

**II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS**

**A. Maintaining Current Information in Forms 175**

28. The Bureaus remind each Auction 99 applicant of its duty pursuant to 47 CFR 1.65 and 1.2105(b) to maintain the accuracy and completeness of all information furnished in its

pending application and in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence, or to amend a Form 175 no more than five days after the applicant becomes aware of the need for the amendment. For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the application amendment. Events occurring after the initial application filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause a loss of or reduction in the percentage of bidding credit specified in the application and must be reported immediately, and no later than five business days after the change occurs.

**B. Submission of Updates to Forms 175**

29. Updates to Forms 175 should be made electronically using the FCC auction application system whenever possible. For the change to be submitted and considered by the Commission, be sure to click on the SUBMIT button.

30. An applicant should not use the auction application system outside of the initial and resubmission filing windows to make changes to its Form 175 for other than administrative changes (e.g., changing contact information or the name of an authorized bidder). After the filing window has closed, the system will not permit applicants to modify information in most of the application's data fields.

31. If changes need to be made outside of the initial and resubmission filing windows, for other than the minor administrative changes as described, the applicant must submit a letter briefly summarizing the changes and subsequently update its Form 175 in the auction application system once it is available. Any letter describing changes to an applicant's Form 175 must be addressed to Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, and submitted by e-mail to [auction99@fcc.gov](mailto:auction99@fcc.gov). The e-mail summarizing the changes must include a subject or caption referring to Auction 99 and the name of the applicant, for example, "Re: Changes to Auction 99 Short-Form Application of

ABC Corp.” The Bureaus request that parties format any attachments to e-mail as Adobe<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft<sup>®</sup> Word documents. Questions about Form 175 amendments should be directed to the Auctions and Spectrum Access Division at (202) 418-0660.

32. Applicants must not submit application-specific material through the Commission’s Electronic Comment Filing System, which was used for submitting comments regarding procedures for conducting Auction 99.

33. Applicants should note that submission of a Form 175 (and any amendments thereto) constitutes a representation by the person certifying the application that he or she is an authorized representative of the applicant with authority to bind the applicant, that he or she has read the form’s instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Applicants are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

### **C. Provisions Regarding Former and Current Defaulters**

34. Current defaulters or delinquents are not eligible to participate in Auction 99, but former defaulter or delinquents can participate so long as they are otherwise qualified and make upfront payments that are 50 percent more than would otherwise be necessary. An applicant is considered a current defaulter or a current delinquent when it, any of its affiliates (as defined in 47 CFR 1.2110), any of its controlling interests (as defined in 47 CFR 1.2105(a)(4)(i), or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for FCC Forms 175 in that auction.

35. Thus, an Auction 99 applicant was required to certify under penalty of perjury that, as of the initial application filing deadline on August 2, 2017, it, its affiliates, any of its controlling interests, and any of the affiliates of its controlling interests, as defined by 47 CFR

1.2110, were not in default on any payment for a Commission construction permit or license (including a down payment) and not delinquent on any non-tax debt owed to any Federal agency. Accordingly, if an applicant has an outstanding non-tax debt to the Commission or any other Federal agency, including any debt that results in a listing of the applicant on the Commission's Red Light Display System, the applicant will be unable to make the required certification that it is not currently in default; if so, such applicant will not be eligible to participate in the bidding for Auction 99.

36. An applicant is considered a former defaulter or a former delinquent when the applicant or any of its controlling interests has defaulted on any Commission construction permit or license or has been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies prior to the Form 175 filing deadline in Auction 99. Each applicant was required to certify under penalty of perjury whether it, along with any of its controlling interests (as defined in 47 CFR 1.2105(a)(4)(i)), has ever been in default on any payment for a Commission construction permit or license (including a down payment) or has ever been delinquent on any non-tax debt owed to any Federal agency. If an applicant or any controlling interest is a former defaulter or former delinquent the applicant may participate further in Auction 99 so long as it is otherwise qualified, and that applicant makes an upfront payment that is 50 percent more than would otherwise be required.

37. In 2015, the Commission narrowed the scope of the individuals and entities to be considered a former defaulter or a former delinquent. For purposes of the certification under 47 CFR 1.2105(a)(2)(xii), the applicant may exclude from consideration any cured default on a Commission construction permit or license or cured delinquency on a non-tax debt owed to a Federal agency for which any of the following criteria are met: (1) the notice of the final payment deadline or delinquency was received more than seven years before the Form 175 filing deadline; (2) the default or delinquency amounted to less than \$100,000; (3) the default or delinquency was

paid within six months after receiving the notice of the final payment deadline or delinquency; or  
(4) the default or delinquency was the subject of a legal or arbitration proceeding and was cured upon resolution of the proceeding.

38. Applicants are encouraged to review previous guidance provided by the Wireless Telecommunications Bureau on default and delinquency disclosure requirements in the context of the auction Form 175 process. For example, it has been determined that, to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the provisions of 47 CFR 1.2105(a) and 1.2106(a) regarding default and delinquency in connection with competitive bidding are limited to circumstances in which the relevant party has not complied with a final payment deadline. Parties are also encouraged to consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

39. The Commission considers outstanding debts owed to the U.S. Government, in any amount, to be a serious matter. The Commission adopted rules that implement its obligations under the Debt Collection Improvement Act of 1996, including a provision referred to as the red light rule. The Commission's adoption of the red light rule, however, does not alter the applicability of any of its competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

40. The Bureaus remind each applicant, however, that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's

lack of current red light status is not necessarily determinative of its eligibility to participate in an auction (or of its upfront payment obligation).

41. Moreover, applicants in Auction 99 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. The Bureaus strongly encourage each applicant to carefully review all records and other available federal agency databases and information sources to determine whether the applicant, or any of its affiliates, or any of its controlling interests, or any of the affiliates of its controlling interests, owes or was ever delinquent in the payment of non-tax debt owed to any federal agency.

### **III. PRE-AUCTION PROCEDURES**

#### **A. Online Tutorial on Bidding Process – Available May 4, 2018**

42. An educational auction tutorial will be available on the Auction 99 web page by May 4, 2018. Once posted, this tutorial will remain available and accessible anytime for reference in connection with this auction.

#### **B. Application Processing and Corrections of Deficiencies**

43. An applicant whose application contains deficiencies and is designated as incomplete will have a limited opportunity to bring its application into compliance with the Commission's competitive rules during a resubmission window, the dates for which will be announced in a future public notice.

44. Commission staff will communicate only with an applicant's contact person or certifying official, as designated on the Form 175, unless the applicant's certifying official or contact person notifies the Commission in writing that applicant's counsel or other representative is authorized to speak on its behalf. Authorizations may be sent by e-mail to [auction99@fcc.gov](mailto:auction99@fcc.gov).

#### **C. Upfront Payments – Due April 19, 2018**

45. In order to become eligible to bid in Auction 99, a sufficient upfront payment and a complete and accurate FCC Remittance Advice Form (FCC Form 159) must be submitted

before 6:00 p.m. ET on April 19, 2018, following the procedures outlined below and the instructions in Attachment B to the *Auction 99 Procedures Public Notice*. After completing its Form 175, an applicant will have access to an electronic version of the FCC Form 159. This Form 159 can be printed and the completed form must be sent by fax to FCC at (202) 418-2843.

**1. Making Upfront Payments by Wire Transfer**

46. Wire transfer payments must be received before 6:00 p.m. ET on April 19, 2018. No other payment method is acceptable. Specifically, the Commission will not accept checks, credit cards, or automated clearing house (ACH) payments. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. The BNF Account Number is specific to the upfront payments for Auction 99. Do not use a BNF Account Number from a previous auction. The following information will be needed:

ABA Routing Number: 081000210

Receiving Bank: U.S. Bank, 1005 Convention Plaza, St. Louis, MO 63101

BENEFICIARY: FCC/Account # 152321044637

Originating Bank Information (OBI Field): (Skip one space between each information item)

“AUCTIONPAY”

APPLICANT FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 21)

PAYMENT TYPE CODE: (same as FCC Form 159, block 24A: “U099”)

FCC CODE 1: (same as FCC Form 159, block 28A: “99”)

PAYER NAME: (same as FCC Form 159, block 2)

PAYER FCC REGISTRATION NUMBER (FRN): (If different from applicant FRN)

47. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must fax a completed FCC Remittance Advice Form, FCC Form 159 (Revised 2/03) to the FCC at (202) 418-2843. On the fax cover sheet, write “Wire Transfer –



Auction Payment for Auction 99.” In order to meet the upfront payment deadline, an applicant’s payment must be credited to the Commission’s account for Auction 99 before the deadline.

48. Each applicant is responsible for ensuring timely submission of its upfront payment and for timely filing of an accurate and complete Form 159. An applicant should coordinate with its financial institution well ahead of the due date regarding its wire transfer and allow sufficient time for the transfer to be initiated and completed prior to the deadline. It is important that auction participants plan ahead to prepare for unforeseen last-minute difficulties in making payments by wire transfer. Each applicant also is responsible for obtaining confirmation from its financial institution that its wire transfer to U.S. Bank was successful and from Commission staff that its upfront payment was timely received and that it was deposited into the proper account. To receive confirmation from Commission staff, contact Gail Glasser of the Office of Managing Director’s Revenue & Receivables Operations Group/Auctions at (202) 418-0578, or alternatively, Theresa Meeks at (202) 418-2945.

49. All upfront payments must be made in U.S. dollars. All upfront payments must be made by wire transfer. Upfront payments for Auction 99 go to an account number different from the accounts used in previous auctions. Failure to deliver a sufficient upfront payment as instructed in the *Auction 99 Procedures Public Notice* by the deadline on April 19, 2018 will result in dismissal of the Form 175 and disqualification from participation in Auction 99.

## **2. FCC Form 159**

50. An accurate and complete Form 159 must be faxed to the FCC at (202) 418-2843 to accompany each upfront payment. Proper completion of this form is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of Form 159 are included in Attachment B of the *Auction 99 Procedures Public Notice*. An electronic pre-filled version of the Form 159 is available after submitting the Form 175. Payers using the pre-filled Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate.

### **3. Upfront Payments and Bidding Eligibility**

51. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The amount of the upfront payment determines a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round. In order to bid on a particular construction permit, otherwise qualified bidders that are designated in Attachment A of the *Auction 99 Procedures Public Notice* for that construction permit must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the *Auction 99 Procedures Public Notice*, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits designated for that applicant in Attachment A, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round. (A provisionally winning bid is a bid that would become a final winning bid if the auction were to close after the given round.) The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit. The specific upfront payment amount and bidding units for each construction permit are set forth in Attachment A.

52. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline. A qualified bidder's

maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified for that applicant in Attachment A.

53. Applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. For this classification as a former defaulter or a former delinquent, defaults and delinquencies of the applicant itself and its controlling interests are included. For this purpose, the term controlling interest is defined in 47 CFR 1.2105(a)(4)(i).

54. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A, the applicant will not be eligible to participate further in the auction. This applicant will retain its status as an applicant in Auction 99 and will remain subject to 47 CFR 1.2105(c) and 73.5002(d).

#### **D. Auction Registration**

55. At least one week before the beginning of bidding in the auction, the Bureaus will issue a public notice announcing all qualified bidders for Auction 99. A qualified bidder is an applicant listed in Attachment A with a submitted Form 175 that is found to be timely filed, accurate, and substantially complies with the Commission's applicable rules and all provisions, including procedures and deadlines, set forth in the *Auction 99 Procedures Public Notice*, provided that such applicant has timely submitted an upfront payment that is sufficient to qualify that applicant to bid.

56. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the

SecurID® tokens that will be required to place bids, the web address and instructions for accessing and logging in to the auction bidding system, an FCC assigned username (User ID) for each authorized bidder, and the Auction Bidder Line phone number.

57. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Wednesday, May 9, 2018, the contact, certifier or authorized bidder listed on that applicant's Form 175 must call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

58. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, contact, or certifying official on the applicant's Form 175 may request replacements. To request replacement of these items, call Technical Support at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY).

#### **E. Remote Electronic Bidding**

59. The Commission will conduct Auction 99 over the Internet, and telephonic bidding will be available as well. Only qualified bidders are permitted to bid. Each applicant should indicate its bidding preference, electronic or telephonic, on its FCC Form 175. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens. For security purposes, the SecurID® tokens, bidding system web address, FCC assigned username, and the telephonic bidding telephone number are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID® token is tailored to a specific auction. SecurID® tokens issued for other auctions or obtained from a source other than the FCC will not work for Auction 99.

#### **F. Mock Auction – May 11, 2018**

60. All qualified bidders will be eligible to participate in a mock auction on May 11, 2018. The mock auction will enable bidders to become familiar with the FCC auction bidding system prior to the auction. The Bureaus strongly recommend that all bidders participate in the mock auction. Details will be announced by public notice.

#### **IV. AUCTION**

61. The first round of bidding for Auction 99 will begin on May 15, 2018. The bidding schedule will be announced in a public notice listing the qualified bidders, which is released at least one week before the start of bidding in Auction 99.

##### **A. Auction Structure**

###### **1. Simultaneous Multiple Round Auction**

62. The Commission's standard simultaneous multiple-round auction format will be used for Auction 99. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which qualified bidders may place bids on individual construction permits. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

###### **2. Eligibility and Activity Rules**

63. The Bureaus will use upfront payments to determine initial (maximum) bidding eligibility (as measured in bidding units) for Auction 99. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each construction permit is assigned a specific number of bidding units as listed in Attachment A of the Auction 99 Procedures Public Notice. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits for which it is designated an applicant in Attachment A as long as the total number of bidding units associated with those construction permits does not

exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and therefore its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid or hold provisionally winning bids in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits for which it is designated an applicant in Attachment A. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

64. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

65. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new bids in the current round and provisionally winning bids from the previous round. A provisionally winning bid is a bid that would become a final winning bid if the auction were to close after the given round.

66. In order to ensure that Auction 99 closes within a reasonable period of time, a bidder is required to be active on 100 percent of its current eligibility during each round of the auction. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

### **3. Activity Rule Waivers**

67. In Auction 99, each bidder is provided with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below

the required minimum activity level. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic. Activity rule waivers are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

68. The FCC auction bidding system will assume that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

69. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the REDUCE ELIGIBILITY function in the FCC auction bidding system. In this case, the bidder's eligibility would be permanently reduced to bring it into compliance with the Auction 99 activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder cannot regain its lost bidding eligibility.

70. Also, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively were to apply an activity rule waiver (using the PROACTIVE WAIVER function in the FCC auction bidding system) during a bidding round in which no bid is placed, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC auction bidding system in a round

in which there is no new bid or a proactive waiver will not keep the auction open.

#### **4. Auction Stopping Rule**

71. For Auction 99, the Bureaus will employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops on every construction permit. Specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bid or applies a proactive waiver.

72. The Bureaus also sought comment on alternative versions of the simultaneous stopping procedure for Auction 99. (1) The auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bid on a construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. (2) The auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bid on a construction permit that already has a provisionally winning bid. Thus, absent any other bidding activity, a bidder placing a new bid on an FCC-held construction permit (a construction permit that does not have a provisionally winning bid) would not keep the auction open under this modified stopping rule. (3) The auction would close using a modified version of the simultaneous stopping rule that combines options (1) and (2). (4) The auction would close after a specified number of additional rounds (special stopping rule) to be announced by the Bureaus. If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s), after which the auction will close. (5) The auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

73. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall



bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureaus are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureaus retain the discretion to exercise any of these options with or without prior announcement during the auction.

## **5. Auction Delay, Suspension, or Cancellation**

74. By public notice and/or by announcement through the FCC auction bidding system, the Bureaus may delay, suspend, or cancel bidding in the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that they will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

## **B. Bidding Procedures**

### **1. Round Structure**

75. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released at least one week before the start of bidding in the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

76. The Bureaus retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may change the amount of time for the

bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

## **2. Reserve Price and Minimum Opening Bids**

77. Normally, a reserve price is an absolute minimum price below which a construction permit or license will not be sold in a specific auction. There are no reserve prices for construction permits in Auction 99.

78. A minimum opening bid is the minimum bid price set at the beginning of the auction below which no bids are accepted. The Bureaus adopt the specific minimum opening amount for each construction permit as listed in Attachment A to the *Auction 99 Procedures Public Notice*.

## **3. Bid Amounts**

79. If the bidder has sufficient eligibility to place a bid on a particular construction permit, an eligible bidder will be able to place a bid on a given construction permit in any of up to nine different amounts in each round. The FCC auction bidding system interface will list the nine acceptable bid amounts for each construction permit.

80. For calculation of the nine acceptable bid amounts for each construction permit, the Bureaus will begin the auction with a minimum acceptable bid percentage of 10 percent and an additional bid increment percentage of 5 percent.

81. In Auction 99, the minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount by one plus the minimum acceptable bid percentage—i.e., provisionally winning bid amount \* 1.10, rounded using the Commission’s standard rounding procedures for auctions as described in the *Auction 99 Procedures Public Notice*.

82. In Auction 99, the FCC auction bidding system will calculate the eight additional bid amounts by multiplying the minimum acceptable bid amount by the additional bid increment percentage of 5 percent, and that result (rounded) is the additional increment amount. The first additional acceptable bid amount equals the minimum acceptable bid amount plus the additional increment amount. The second additional acceptable bid amount equals the minimum acceptable bid amount plus two times the additional increment amount; the third additional acceptable bid amount is the minimum acceptable bid amount plus three times the additional increment amount; etc. Because the additional bid increment percentage is 5 percent, the calculation of the additional increment amount is  $(\text{minimum acceptable bid amount}) * (0.05)$ , rounded. The first additional acceptable bid amount equals  $(\text{minimum acceptable bid amount}) + (\text{additional increment amount})$ ; the second additional acceptable bid amount equals  $(\text{minimum acceptable bid amount}) + (2 * (\text{additional increment amount}))$ ; the third additional acceptable bid amount equals  $(\text{minimum acceptable bid amount}) + (3 * (\text{additional increment amount}))$ ; etc.

83. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the additional bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a \$1,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is \$1,200 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$1,000 above the provisionally winning bid. If the Bureaus exercise this

discretion to change bid amounts, they will alert bidders by announcement in the FCC auction bidding system during the auction.

#### **4. Provisionally Winning Bids**

84. The FCC auction bidding system at the end of each bidding round will determine a provisionally winning bid for each construction permit based on the highest bid amount received for that permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids.

85. The FCC auction bidding system using a pseudo-random number generator will assign a pseudo-random number to each bid upon submission. In the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids), the tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to close with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the construction permit receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

86. A provisionally winning bid will be retained until there is a higher bid on the construction permit at the close of a subsequent round. As a reminder, provisionally winning bids count toward activity for purposes of the activity rule.

#### **5. Bidding**

87. All bidding will take place remotely either through the FCC auction bidding system or by telephonic bidding. There will be no on-site bidding during Auction 99. Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the

close of a round. The length of a call to place a telephonic bid may vary; please allow a minimum of ten minutes.

88. An Auction 99 bidder's ability to bid on specific construction permits is determined by two factors: (1) the construction permits designated for that applicant in Attachment A of the *Auction 99 Procedures Public Notice* and (2) the bidder's eligibility in that a bidder must have sufficient eligibility to place a bid on a particular construction permit. The bid submission screens will allow bidders to submit bids on only those construction permits designated for that applicant in Attachment A.

89. In order to access the bidding function of the FCC auction bidding system, bidders must be logged in during the bidding round using the passcode generated by the SecurID<sup>®</sup> token and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

90. In each round, eligible bidders will be able to place bids on a given construction permit in any of up to nine pre-defined bid amounts. For each construction permit, the FCC auction bidding system will list the acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC auction bidding system also includes an upload function that allows text files containing bid information to be uploaded.

91. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that permit will be equal to its minimum opening bid amount. Once there are bids on a permit, minimum acceptable bids for the following round will be determined as described in the *Auction 99 Procedures Public Notice*.

92. During a round, an eligible bidder may submit bids for as many construction permits as it wishes (providing that it is eligible to bid on the specific permits), remove bids placed in the current bidding round, or permanently reduce eligibility. If multiple bids are submitted for the

same construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidding units associated with construction permits for which the bidder has removed bids do not count towards current activity.

## **6. Bid Removal and Bid Withdrawal**

93. In the FCC auction bidding system, each qualified bidder has the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By removing a bid within a round, a bidder effectively unsubmits the bid. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

94. The Bureaus received no comment on the issue of prohibiting Auction 99 bidders from withdrawing any bid after close of the round in which that bid was placed. Accordingly, the Bureaus will prohibit bid withdrawals in Auction 99. Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed, even if a bid was mistakenly or erroneously made.

## **7. Round Results**

95. Reports reflecting bidders' identities for Auction 99 will be available before and during the auction. Thus, bidders will know in advance of Auction 99 the identities of the bidders against which they are bidding.

96. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC-held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

## **8. Auction Announcements**

97. The Commission will use auction announcements to report necessary information such as schedule changes. All auction announcements will be available by clicking a link in the FCC auction bidding system.

## **V. POST-AUCTION PROCEDURES**

98. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and the long-form applications (FCC Forms 349).

### **A. Down Payments**

99. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 99 to twenty percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

### **B. Final Payments**

100. Each winning bidder will be required to submit the balance of the net amount for each of its winning bids within ten business days after the applicable deadline for submitting down payments.

### **C. Long-Form Applications (FCC Form 349)**

101. The Commission's rules currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station) and required exhibits for each construction permit won through Auction 99. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. As required by 47 CFR 1.1104, a winning bidder in a commercial broadcast spectrum auction must submit an application filing fee with its post-auction

long-form application. Further instructions on these and other filing requirements will be provided to winning bidders in the auction closing public notice. An Auction 99 applicant that has its long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

**D. Default and Disqualification**

102. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make a full and timely final payment, or is otherwise disqualified) is liable for default payments as described in 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 99 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. The percentage of the applicable bid to be assessed as an additional payment for a default in Auction 99 is 20 percent of the applicable bid.

103. In the event of a default, the Commission has the discretion to re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

**E. Refund of Remaining Upfront Payment Balance**

104. All refunds of upfront payment balances will be returned to the payer of record as identified on the Form 159 unless the payer submits written authorization instructing otherwise. To access the refund form, bidders are encouraged to use the Refund Information icon found on the Auction Application Manager page or through the Refund Form link available on the Auction



Application Submit Confirmation page in the FCC auction application system. After the required information is completed on the blank form, the form should be printed, signed, and submitted to the Commission by mail or fax as instructed below.

105. If an applicant has elected not to complete the refund form through the Auction Application Manager page, the Commission is requesting that all information listed below be supplied in writing.

Name, address, contact and phone number of Bank

ABA Number

Account Number to Credit

Name of Account Holder

FCC Registration Number (FRN)

The refund request must be submitted by fax to the Revenue & Receivables Operations

Group/Auctions at (202) 418-2843 or by mail to:

Federal Communications Commission

Financial Operations

Revenue & Receivables Operations Group/Auctions

Gail Glasser

445 12th Street, SW, Room 1-C864

Washington, DC 20554

Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418-0578 or Theresa Meeks at (202) 418-2945.

## **VI. SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS**

106. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 47 U.S.C. 601-612, the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with *Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, Notice of

*Proposed Rulemaking*, and other Commission orders (collectively, Broadcast Competitive Bidding NPRMs) pursuant to which Auction 99 will be conducted. Final Regulatory Flexibility Analyses (FRFAs) were likewise prepared in the Broadcast First Report and Order and other Commission orders (collectively, Broadcast Competitive Bidding Orders) pursuant to which Auction 99 will be conducted. In this proceeding, a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) was incorporated in the *Auction 99 Comment Public Notice*. The Commission sought written public comment on the proposals in the *Auction 99 Comment Public Notice*, including comments on the Supplemental IRFA. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the Broadcast Competitive Bidding Orders to reflect the actions taken in the *Auction 99 Procedures Public Notice* and conforms to the RFA.

107. *Need for, and Objectives of, the Public Notice.* The *Auction 99 Procedures Public Notice* implements competitive bidding rules adopted by the Commission in multiple notice-and-comment rulemaking proceedings, as well as establishes additional procedures to be used by the Bureaus, on delegated authority, for competitive bidding in AM Revitalization - FM Translator Auction 99 for up to 12 specified cross-service FM translator construction permits. More specifically, the *Auction 99 Procedures Public Notice* provides an overview of the procedures, terms and conditions governing Auction 99 and the post-auction application and payment processes, as well as setting the minimum opening bid amount for each of the Auction 99 construction permits.

108. To promote the efficient and fair administration of the competitive bidding process for all Auction 99 participants, the Bureaus in the *Auction 99 Procedures Public Notice* announced the following policies: (1) Application of the current rules prohibiting certain communications between auction applicants and the related prohibition on joint bidding arrangements to implement the Bureaus' prior decision to allow eligible AM licensees having any of the same controlling interests in common to file separate Forms 175, rather than restricting

those licensees to a single Form 175; (2) Use of a simultaneous multiple-round auction format, consisting of sequential bidding rounds with a simultaneous stopping procedure (with discretion by the Bureaus to exercise alternative stopping rules under certain circumstances); (3) A specific minimum opening bid amount for each construction permit available in Auction 99; (4) A specific upfront payment amount for each construction permit; (5) Use of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each construction permit; (6) Use of an activity requirement so that bidders must bid actively during the auction rather than waiting until late in the auction before participating; (7) A single stage auction in which a bidder is required to be active on 100 percent of its bidding eligibility in each round of the auction; (8) Provision of three activity waivers for each qualified bidder to allow it to preserve bidding eligibility during the course of the auction; (9) Use of minimum acceptable bid amounts and additional acceptable increments, along with a proposed methodology for calculating such amounts, with the Bureaus retaining discretion to change their methodology if circumstances dictate; (10) A procedure for breaking ties if identical high bid amounts are submitted on one permit in a given round; (11) Bid removal procedures; (12) A prohibition on bid withdrawals in Auction 99; and (13) Establishment of an additional default payment of 20 percent under 47 CFR 1.2104(g)(2) in the event that a winning bidder defaults or is disqualified after the auction.

109. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that addressed the procedures and policies proposed in the Supplemental IFRA.

110. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comment filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change

made to the proposed procedures as a result of those comments, 5 U.S.C. 604(a)(3). The Chief Counsel did not file any comments in response to the proposed procedures in the *Auction 99 Comment Public Notice*.

111. *Description and Estimate of the Number of Small Entities to Which the Proposed Procedures Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term small entity as having the same meaning as the terms small business, small organization, and small governmental jurisdiction. In addition, the term small business has the same meaning as the term small business concern under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA, 15 U.S.C. 632.

112. Auction 99 is a closed auction; therefore the specific competitive bidding procedures and minimum opening bid amounts described in the *Auction 99 Procedures Public Notice* will affect only the 26 individuals or entities listed in Attachment A to that public notice and who are the only parties eligible to complete the remaining steps to become qualified to bid in Auction 99. The 26 eligible individuals or entities for Auction 99 include firms of all sizes.

113. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard for this category as firms having \$38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than \$25 million per year, 17 with annual receipts between \$25 million and \$49,999,999 and 26 with annual receipts of \$50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

114. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database as of January 30, 2018, about 11,261 (or about 99.92 percent) of 11,270 commercial radio stations had revenues of \$38.5 million or less and thus qualify as small entities under the SBA definition. The Bureaus note, however, that the SBA size standard data does not enable the Bureaus to make a meaningful estimate of the number of small entities who may participate in Auction 99. There are a maximum of 26 entities that may become qualified bidders in Auction 99, in which applicant eligibility is closed. The specific procedures and minimum opening bid amounts announced in the *Auction 99 Procedures Public Notice* will affect directly all applicants participating in Auction 99.

115. The Bureaus also note that they are unable to accurately develop an estimate of how many of these 26 entities are small businesses based on the number of small entities that applied to participate in prior broadcast auctions, because that information is not collected from applicants for broadcast auctions in which bidding credits are not based on an applicant's size (as is the case in auctions of licenses for wireless services). Potential eligible bidders in Auction 99 may include existing holders of broadcast station construction permits or licenses. In 2013, the Commission estimated that 97 percent of radio broadcasters met the SBA's prior definition of small business concern, based on annual revenues of \$7 million. The SBA has since increased that revenue threshold to \$38.5 million, which suggests that an even greater percentage of radio broadcasters would fall within the SBA's definition. Based on Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database, 4,635 (99.94%) of 4,638 AM radio stations have revenue of \$38.5 million or less. Accordingly, based on this data, the Bureaus conclude that the majority of Auction 99 eligible bidders will likely meet the SBA's definition of a small business concern.

116. In assessing whether a business entity qualifies as small under the definition, business control affiliations must be included. The Bureaus' estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on

which it is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of small business also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Furthermore, the Bureaus are unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. In addition, the Bureaus note that it is difficult at times to assess these criteria in the context of media entities and therefore estimates of small businesses to which they apply may be over-inclusive to this extent.

117. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* In the *Auction 99 Procedures Public Notice*, the Bureaus adopted no new reporting, recordkeeping or other compliance requirements for small entities or other auction applicants. The Commission has designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission's two-phased auction application process, parties desiring to participate in an auction file streamlined, Forms 175 in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's Form 175 and certifications, as well as its upfront payment. The Public Notice provides instructions for each Auction 99 applicant to maintain the accuracy of their previously filed Form 175 electronically using the FCC auction application system and/or by direct communication with the Auctions and Spectrum Access Division. More specifically as mentioned above, small entities and other Auction 99 applicants will be qualified to bid in the auction only if they comply with the following: (1) submission of a Form 175 that is timely and is found to be substantially complete, and (2) timely submission of a sufficient upfront payment for at least one of the permits for which it is designated as an applicant on Attachment A to the *Auction 99 Procedures Public Notice*. The timely submitted payment must be accompanied by a

complete and accurate FCC Remittance Advice Form (FCC Form 159), and made by 6:00 p.m. ET on April 19, 2018, following the procedures and instructions set forth in Attachment B to the *Auction 99 Procedures Public Notice*. An applicant whose application is found to contain deficiencies will have a limited opportunity to bring their application into compliance with the Commission's competitive bidding rules during a resubmission window. All qualified bidders will automatically be registered for the auction and mailed the necessary registration materials.

118. In the second phase of the process, there are additional compliance requirements for winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the following: (1) within 10 business days of release of the auction closing public notice submit as a down payment sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 99 to twenty percent of the net amount of its winning bids; (2) within 10 business days after the down payment deadline submit the balance of the net amount for each of its winning bids; and (3) within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, electronically submit a properly completed long-form application (FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station) and required exhibits for each construction permit won through Auction 99. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit, 5 U.S.C. 603(c)(1)-(4).

119. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather

than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

120. The Bureaus believe that the steps described below to facilitate participation in Auction 99 will result in both operational and administrative cost savings for small entities and other auction participants. In light of the numerous resources that will be available from the Commission at no cost, the processes and procedures adopted for Auction 99 should result in minimal economic impact on small entities. For example, prior to the auction, the Commission will hold a mock auction to allow eligible bidders the opportunity to familiarize themselves with both the processes and systems that will be utilized in Auction 99. During the auction, participants will be able to access and participate in the auction via the Internet using a web-based system, or telephonically, providing two cost effective methods of participation and avoiding the cost of travel for in-person participation. Further, small entities as well as other auction participants will be able to avail themselves of hotlines for assistance with auction processes and procedures as well as technical support hotlines to assist with issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction system. In addition, all auction participants will have access to various other sources of information and databases through the Commission that will aid in both their understanding and participation in the process. These steps coupled with the advance communication of the bidding procedures rules of the road in Auction 99 should ensure that the auction will be administered efficiently and fairly, with certainty for small entities as well as other auction participants.

121. *Report to Congress.* The Commission will send a copy of the *Auctions 99 Procedures Public Notice*, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Auctions 99 Procedures Public Notice*, including and this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA, pursuant to 5 U.S.C. 604(b).



Federal Communications Commission.

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